

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 418 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No

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PRANBHAI PARSHOTTAM DOCTOR

Versus

AHER RAMSHI DOSA GOJIYA  
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Appearance:

MR JR NANAVATI for Petitioner  
MR SURESH M SHAH for Respondent  
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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/07/1999

ORAL JUDGEMENT

1. Present appellant - original plaintiff filed a Civil Suit against the present respondent in the court of learned Civil Judge (JD), Khambhalia, being Regular Civil Suit No. 54 of 1978. It was the case in short of the plaintiff that the plaintiff advanced Rs.6,600/- to the defendant because he was his patient, and in need of

money and was known to the plaintiff. It was the case of the plaintiff that necessary writing was executed by the defendant on 19th March, 1976, wherein the defendant had

undertaken to repay the above said amount by two installments, namely, one of Rs. 2,000/- to be paid in the month of Vaishakh Sud 3rd of S.Y. 2032 and the remaining amount of Rs.4,600/- to be paid by the defendant on Posh Sud 2nd of S.Y. 2034. Defendant did not pay the amount. Accordingly, notice was issued to the plaintiff and ultimately plaintiff filed the above said suit. The defendant resisted the suit and denied the allegations in toto. Trial court after recording the evidence and hearing the parties, came to the conclusion that the plaintiff was not able to establish that an amount of Rs. 6,600/- was advanced by him to the defendant with condition of repayment by two installments. The learned trial judge was also pleased to come to the conclusion that there was no cause of action for the plaintiff and the suit was not maintainable in the form it was presented. The learned trial judge also came to the conclusion that the suit was barred by limitation and the learned trial judge was pleased to dismiss the suit.

2. Being aggrieved, the plaintiff filed an appeal before the District Court at Jamnagar being Regular Civil Appeal No. 20 of 1981, which was decided by the District Judge on 31st August, 1981. The District Court observed that the notice was given for the repayment of Rs. 6,600/- which was paid to the defendant by the plaintiff by a single transaction, but, in evidence, the plaintiff

stated that the amount of Rs. 6,600/- was advanced to the plaintiff in several transactions. Trial court did not believe the account books presented by the plaintiff as well as the alleged written reply executed by the defendant. It was urged before the District Court by the plaintiff that the trial court did not place any reliance on Exhibit 39 - the alleged writing and on the accounts books, and if the above said writing is not taken into consideration, there is no evidence to come to the conclusion that there was no transaction between the parties. After hearing the parties and appreciating the evidence on record, the District Court came to the conclusion that neither the Accounts Books produced by

the plaintiff were proved nor the writing was proved to have been executed by the defendant and, therefore, the passing of consideration could not be said to have been proved. While negating the argument on behalf of the appellant, the District Court dismissed the Appeal and confirmed the decision of the trial court.

3. Being aggrieved, the Appellant filed the present Second Appeal. The substantial questions of law which was framed was whether in the facts and circumstances of the case, the writing executed (Exh.39) is proved or not and whether in the facts and circumstances of the case, the decree can be passed against the defendant on the basis of writing - Exhibit 39 dated 19th March, 1976. Now pursuing the record, it is clear that on fact, the Exh. 39 was not held to be proved by both the courts

below. Both the courts below have taken into consideration of the evidence of the plaintiff and defendant and also the evidence of the person, who identified the thumb mark of the defendant. From these facts, both the courts below came to the conclusion that the Exhibit 39 was not proved to be executed by the defendant. Now, this cannot be considered to be a substantial question of law, of course, the conclusion is arrived at by both the courts below regarding the facts and the evidence of the case. Other wise also, there is concurrent finding of facts by two courts below, no interference is called for in this Second Appeal. In this view of the matter, following order is passed:

" Appeal is dismissed with no order as to costs"

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p.n.nair